IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14-9-2007

Coram

The Honourable Mr.Justice K. VENKATARAMAN

WRIT PETITION No.22114 of 2007
and
M.P.Nos.1 and 2 of 2007

A.Arockiasamy .. Petitioner

Vs.

1. The Management,
   Nirmala Hr.Sec.School,
   Kolathur, Salem.

2. The State of Tamilnadu,
   rep. by the Secretary,
   Department of Education,
   Fort St. George, Chennai-9.

3. The Director of School Education,
   Chennai 600 006.

4. The District Educational Officer,
   Sangagiri, Salem. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to continue the petitioner in employment in the post of Post Graduate Assistant from 1.7.2007 till the end of the present academic year in accordance with the G.O.Ms.No.1643 dated 27.10.1988 of the first respondent in the same school, namely, Nirmala Higher Secondary School under the control of the third respondent.

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For Petitioner : Mr.S.Soundarajan
For Respondent-1: Mr.S.Doraisamy
For R-2 to R-4 : Mr.Pa.Kadirvel, Govt.Advocate.

O R D E R

The petitioner has come forward with the present Writ Petition for mandamus directing the respondents to continue the petitioner in employment in the post of Post Graduate Assistant from 1.7.2007 till the end of the present academic year in accordance with G.O.No.1643 dated 20.10.1988 in the same school, namely, Nimala Higher Secondary School under the control of the third respondent.

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2. The facts in nutshell for the disposal of the present Writ Petition are as follows:-

The petitioner was working as P.G. Assistant in the first respondent school. He has not received any black mark in his career. He is due to retire on 30.6.2007 on attaining the age of superannuation. Since the academic year has commenced from 1.6.2007, the petitioner has requested the school management to issue a letter of re-employment to work till the end of the present academic year, namely, 31.5.2008. Since the third respondent has not considered his case, he was constrained to write to the first and fourth respondents on 7.6.2007 for issuing necessary orders re-employing him till the end of present academic year as per the Government Orders prevailing. Since no order has been communicated either by the respondents 1 and 4 or by the third respondent, he has approached this Court for the relief set out earlier.

3. After notice, the first respondent-school management has filed counter affidavit wherein it has been set out that the parents and the students were demanding for a long period that a suitable fully qualified P.G. Assistant in Chemistry to be appointed in the place of the petitioner, since there were lot of complaint from the students that the petitioner was not teaching properly and he has not equipped himself for the recent revised syllabus introduced by the Government from time to time. From the academic year 2005-06, he has withdrawn from teaching Plus One and Plus Two students and from the academic year 2005, he has been asked to teach English in XI Standard and Science in IX and X standards, but his teaching even for the X Standard is also not upto mark. That apart, in the academic year 2006-07, out of total working days of 200, the petitioner had worked only for 132 days. Further, his health condition is also not good. In the academic year 2006-07, out of 200 working days, he has taken 45 days of medical leave. That apart, several written complaints have been received from the student community that his conduct in the class room is very indecent. He used to beat students as and when he was not able to teach the students from the new syllabus. Thus, the sum and substance of the counter affidavit is that the petitioner is not entitled for any re-employment in view of the reasons stated above.

4. On the above facts, Mr.S.Soundararajan, the learned counsel appearing for the petitioner, Mr.S.Doraisamy, the learned counsel appearing for the first respondent and Mr.Pa.Kadirvel, the learned Government Advocate appearing for respondents 2 to 4 have placed their submissions.

5. Mr.S.Soundararaj, the learned counsel appearing for the petitioner, contended that the petitioner shall be re-employed till the next academic year as per G.O.Ms.No.1643 Education Department dated 27.10.1988. The allegations that have been made in the counter affidavit were not at all made when the petitioner was in employment before attaining the age of superannuation. So far no disciplinary proceeding has been initiated against the petitioner about his character, physical fitness or teaching capacity. For the first time,

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such allegations have been made against the petitioner in the counter affidavit. Since it is an afterthought, the same has to be rejected.

6. Per contra, Mr.S.Doraisamy, the learned counsel appearing for the first respondent-school management, contended that there were complaints from the parents and the students about the petitioner behaviour and his teaching capacity. Hence, if the petitioner is allowed to continue till the next academic year, it will unnecessarily cause problems to the student community.

7. The right of the teachers to continue in service till the end of the academic year in case of his date of retirement falls in the middle of the academic year cannot be disputed. The said right admittedly flows from various orders of the Government issued from time to him and last of such order flows from G.O.Ms.No.1643 dated 27.10.1988. The said Government Order reads as follows:-

> "In the order first read above, while permitting the continuance of the teachers in service on re-employment terms on their attainment of the age of superannuation in the middle of the school year the following pre-requisite conditions have been prescribed:-
>
> 1. The character and the conduct of the teacher should be satisfactory.
>
> 2. They should be physically fit to continue in service.
>
> 2.Now it has been brought to the notice of the Government that in respect of School Education Department, more than 25% of the Pension proposals are being sent to the Accountant-General for settlement in a year. To avoid delay on the part of the teachers who are due to retire in preferring their claims and also in view of the fact that almost all the teachers are interested in getting reemployment, the Director of School Education has suggested to incorporate another condition, viz the pension papers should be submitted at least one year before the date of their retirement, be made as the third pre-requisite conditions for re-employment.
>
> 3.The Government accept the suggestion made by the Director of Schools Education and direct the condition that pension applications of Teachers working under all management under the control of Education Department including public sector institutions on re-employment terms on their attainment of superannuation in the middle of the school year should be sent to the Accountant General at least one year before the date of their retirement as prescribed as a pre-requisite condition in addition to the two pre-requisite conditions prescribed in G.O.Ms.No.249, Educations, dated 9.2.59."

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8. Thus, the above said G.O. stipulates three conditions for the teachers who attain the age of superannuation in the middle of the school year till the end of the school year, namely, (i) the conduct and character of the teacher should be satisfactory; (ii) they should be physically fit to continue in service; and (iii) the pension papers should be submitted at least one year before the date of their retirement. If the petitioner satisfies the above conditions, the petitioner is entitled for re-employment, otherwise he is not entitled for any re-employment.

9. On these backdrop of facts, it has to be seen whether the petitioner has satisfied the above conditions enumerated in the said G.O. and that he is entitled for re-employment.

10. The case of the petitioner is that he has worked in the institution with an unblemished record for the last 35 years and he had very good relations with the students. There is no adverse remarks throughout his service and his service record itself will prove the same. While so, without assigning any reason whatsoever, the school management refused re-employment to the petitioner. It is not the case of the school management that on earlier occasions, (i.e.) prior to the petitioner's attaining the age of superannuation, disciplinary proceedings have been initiated against the petitioner for his misbehaviour or irregularities. For the first time in the counter affidavit, the school management has made certain allegations against the petitioner. If really there were certain irregularities against the petitioner, definitely the school management would have taken some disciplinary proceedings against the petitioner, but nothing of such kind has been taken against him. The question that has to be considered is whether a person who has not been been served with any charge memo or disciplinary proceedings can be refused re-employment till the next academic year.

11. No doubt the G.O. referred to above states that a prerequisite condition for re-employment is that the character and conduct of the teacher should be satisfactory and that he should have physical fitness to continue in service. From the records, it could be seen that no action seems to have been taken against the petitioner for any of the irregularities. Though in the counter affidavit filed by the first respondent-school management, it has been stated that there were complaints against the petitioner by the students and the parents, the petitioner till he attained the age of superannuation has been called upon to explain the same and that no charge memo on those complaints has been issued to him and equally there was no enquiry. The petitioner has asserted in the reply affidavit that the petitioner was not called upon to explain and there was no charge sheet and an enquiry against such complaints. This will show that the misconduct and other allegations have been now made against the petitioner for the first time in the counter affidavit filed before this Court.

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12. It is no doubt true that the teacher should be a role model not only to the students and the institution, but also to the society. But, at the same time, the school management shall not stall the petitioner to avail the benefits that have been conferred by the Government, namely, allowing the teacher to be in re-employment till the end of the academic year, if the conduct and character of the teacher is satisfactory and that he is physically fit.

13. In this connection, it will be useful to refer certain passages in the decision reported in 1996 W.L.R. 259 (DAVIDTHAMPI DHAS, C. v. THE GOVERNING BODY OF N.M.CHRISTIAN COLLEGE & OTHERS). When a similar situation has arisen, this Court in the said decision in paragraph 9 has held as follows:-

> "It is contended by Mr.D.Sadhasivan, learned counsel for the petitioner that when no disciplinary action has been taken against the petitioner, it is mandatory on the part of the management to continue the petitioner in service till 31.5.1996. As rightly pointed out by Mr.D.Sadhasivan, no disciplinary action has ever been taken against the petitioner though some irregularities have been alleged to have been committed in the years 1987 and 1988 when the petitioner was the Head of the Department of Botany."

Further, in paragraph 17 of the said decision, it has been held as follows:-

> "As far as the conduct of the petitioner is concerned, no material is put forth by the management. Therefore, I am of the view, that the decision of the management not to continue the petitioner in service after 31.1.1996 is without any basis and arbitrary. As rightly contended by the learned counsel for the petitioner, there is no question of any teacher asking for any continuation. The Government Order specifically states that the institutions are to continue the teachers till the end of the academic year provided they satisfy the three conditions laid down in the Government Order, G.O.Ms.No.452 dated 24.3.1970, which has been followed in the subsequent orders."

14. In fact, reliance has been placed on decision of the Division Bench of this Court in W.A.No.1179 of 1993 dated 6.9.1994 (S.SUNDARAM v. THE SECRETARY, C.S.I. DIOCESE OF MADRAS). In that case, the Division Bench has pointed out that an analysis of the Government Orders would disclose that re-employment is far ensuring continuity of benefit of teaching from the same teachers to the students during the academic year, that it is a re-employment and not continuity of service on fulfilling the conditions that the work and conduct are satisfactory, that they are physically found fit for the further service and that no disciplinary proceedings are pending against them. Therefore, it is

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clear, that it is the very same teacher, whose work and conduct are found to be fit for further service and against whom no disciplinary proceeding is pending, is directed to be continued on reemployment basis during the remaining period of that academic year.

15. Furthermore, as stated already, the petitioner was not served with any charge memo about the irregularity or misconduct during his entire tenure of service. If the statements made in the counter affidavit are true, there would be an order passed by the respondent refusing to re-employ the petitioner citing those reasons. But, no such order has been passed by the school authorities.

16. For all the reasons stated above, I am constrained to hold that the denial of re-employment to the petitioner till the end of the academic year is unjust and unreasonable. Hence, the respondents are directed to continue the petitioner in employment in the post of Post Graduate Assistant till the end of the present academic year in the first respondent-school.

17. In the result, the Writ Petition stands allowed. Consequently, the connected M.Ps. are closed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary,
   Department of Education,
   Fort St. George, Chennai-9.

2. The Director of School Education,
   Chennai 600 006.

3. The District Educational Officer,
   Sangagiri, Salem.

1 cc To Mr.S.Soundararajan, Advocate, SR.57854.
1 cc To Mr.S.Doraisamy, Advocate, SR.57488.
1 cc To The Government Pleader, SR.57671.

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TEJ(CO)
RVL 21.09.2007

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